

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JIMMY L. MARTINDALE
Claimant

VS.

CESSNA AIRCRAFT COMPANY
Respondent
Self-Insured

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Docket No. 208,690

ORDER

The application of claimant for review by the Workers Compensation Appeals Board of the Award of Administrative Law Judge Jon L. Frobish dated March 3, 1997, came on for oral argument on July 23, 1997.

APPEARANCES

Claimant appeared by and through his attorney, John C. Nodgaard of Wichita, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Edward D. Heath, Jr. of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations listed in the Award of the Administrative Law Judge are herein considered by the Appeals Board. In addition, the parties stipulate to the inclusion in the record the deposition of Nancy A. Didriksen, Ph.D., taken September 30, 1996, which was filed with the Division of Workers Compensation on March 19, 1997, approximately sixteen days after the Award of the Administrative Law Judge was issued. This deposition, which is of significance, was not considered by the Administrative Law Judge at the time of the Award.

ISSUES

The following issues were raised for consideration by claimant.

1. Whether claimant suffered accidental injury or occupational disease on the day or dates alleged.
2. Whether claimant's accidental injury or occupational disease arose out of and in the course of his employment with respondent.

3. The nature and extent of claimant's injury and/or disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

At oral argument the parties acknowledged the deposition of Nancy A. Didriksen, Ph.D., taken on behalf of claimant on September 30, 1996, was not considered by the administrative law judge as it was not filed with the Division of Workers Compensation until sixteen days after the March 3, 1997 Award was issued. The evidence provided in Dr. Didriksen's deposition is significant to the position of claimant and is directly contradictory to the evidence provided by respondent in the deposition of Mitchel A. Woltersdorf, Ph.D., taken February 10, 1997. Respondent acknowledges the deposition of Dr. Didriksen was taken within the terminal date of claimant and should have been considered as part of the record. The parties are unwilling to stipulate to the Appeals Board being the initial finder of fact with regard to the deposition of Dr. Didriksen and respondent requests this matter be remanded to the Administrative Law Judge for consideration of the entire record and issuance of the final award. The Appeals Board agrees this matter should be remanded to the Administrative Law Judge for consideration of the entire record, including the deposition of Nancy A. Didriksen, Ph.D., for determination of the specific issues raised therein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish, dated March 3, 1997 should be set aside and this matter should be, and hereby is, remanded to the administrative law judge for consideration of the entire record. The Appeals Board does not retain jurisdiction of this matter and additional appeals to the Appeals Board must be filed in accordance with the appropriate statutory limitations.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John C. Nodgaard, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director